

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

DECISION AND ORDER
13-CR-86S

DEWAYNE VASS,

Defendant.

1. On May 9, 2013, Defendant Dewayne Vass waived indictment and pleaded guilty to a single-count felony information, which charged him with committing wire fraud affecting a financial institution, in violation of 18 U.S.C. § 1343. (Docket Nos. 1-3.) On April 27, 2015, this Court sentenced Defendant to, *inter alia*, 30 months' incarceration and 3 years' supervised release. (Docket Nos. 19, 22.)

2. On November 14, 2019, after Defendant served his term of imprisonment and while he was on supervised release, the United States Probation Office submitted a Petition for Offender Under Supervision. (Docket No. 25.) That petition contains five charges relating to Defendant's alleged possession with intent to distribute a controlled substance, in violation of 21 U.S.C. § 841 (a)(1). The charges stem from the Probation Office's discovery of cocaine, marijuana, cash, scales, cell phones, and other paraphernalia during a search of Defendant's residence. Defendant has been detained since his arrest on the violation petition.

3. The results of Probation's search also led to new criminal charges being brought against Defendant by way of a criminal complaint. See United States v.

Dewayne Vass, 20-MJ-5000 (MJR). But after further investigation and discovery, the government indicated on March 18, 2020, that it will move to dismiss the criminal complaint. (See Vass, 20-MJ-5000, Docket No. 5.) According to Defendant, the government lacks evidence that he actually or constructively possessed any of the items discovered in the search, which were discovered in a room rented by someone else that Defendant had no control over. See Affidavit of Peter M. Kooshian, Docket No. 36, ¶¶ 6-12.

4. In light of the changed circumstances concerning the government's proof and decision to dismiss the criminal complaint for lack of evidence, Defendant now moves for release from custody. (Docket No. 36.) In supervised release proceedings, custody is governed by Rule 32.1 of the Federal Rules of Criminal Procedure. That rule states that a defendant may be released or detained under 18 U.S.C. § 3143 (a)(1) pending further proceedings. See Rule 32.1 (a)(6). Eighteen U.S.C. § 3143 (a)(1), in turn, requires that the court "order that a person who has been found guilty of an offense and who is awaiting imposition or execution of sentence . . . be detained, unless the [court] finds by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released under section 3142 (b) or (c)." By rule, "[t]he burden of establishing by clear and convincing evidence that the person will not flee or pose a danger to any other person or to the community rests with the person." Rule 32.1 (a)(6).

5. Here, in light of the showing that there is insufficient proof that Defendant possessed the illegal items discovered during the search or otherwise engaged in illegal

conduct, as demonstrated by the government's statement on the record that it will dismiss the criminal charges, this Court finds that Defendant is not a flight risk or danger to another person or the community. He will therefore be released on his prior conditions of supervised release, including the imposed modifications. (See Docket Nos. 19, 22, 23, 24.) Defendant's release will be effective upon Defendant's counsel providing Defendant's probation officer the address at which Defendant will reside and that address being approved by the probation officer.

IT HEREBY IS ORDERED, that Defendant's Motion for Release (Docket No. 36) is GRANTED.

FURTHER, that Defendant's counsel is directed to immediately advise the assigned probation officer of the address of Defendant's proposed residence.

FURTHER, that Defendant's release is not effective under this decision until the United States Probation Department verifies, assesses, and approves the appropriateness of Defendants' proposed residence.

SO ORDERED.

Dated: March 23, 2020
Buffalo, New York

s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge